

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SHAW FAMILY ARCHIVES, LTD.,
BRADFORD LICENSING, INC., JAMES E.
DOUGHERTY, and VALHALLA
PRODUCTIONS, LLC.

Plaintiffs/Consolidated Defendants,

v.

CMG WORLDWIDE, INC. and MARILYN
MONROE, LLC,

Defendants/Consolidated Plaintiffs.

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Honorable Colleen McMahon

**STATEMENT OF UNDISPUTED FACTS
IN SUPPORT OF MARILYN MONROE, LLC's MOTION FOR SUMMARY
JUDGMENT ON COUNT II AGAINST SHAW FAMILY ARCHIVES, LTD.**

Defendant/Consolidated Plaintiff Marilyn Monroe, LLC, pursuant to Rule 56.1 of the Local Rules of the United States District Court for the Southern District of New York, respectfully submits the following statement of undisputed facts:

1. On September 6, 2006, one of Marilyn Monroe, LLC's Indiana lawyers, Tracy Betz, purchased a T-shirt at a Target retail store on East Washington Street in Indianapolis, Indiana. *See* Declaration of Tracy Betz ("Betz Decl.") at ¶¶ 1-2.
2. A picture, image and likeness of Marilyn Monroe was printed on the front of the T-shirt. A second picture of Marilyn Monroe was printed on the tag that was affixed to the T-shirt. *See* Betz Decl. at ¶ 3 and Exh. A.
3. The word "Marilyn" is printed on the front of the T-shirt under the picture, likeness and image of Marilyn Monroe. The words "Marilyn Monroe" are printed on the inside neck label of

the T-shirt. Likewise, the word “Marilyn” is written in cursive script on the tag that was affixed to the T-shirt. *See* Betz Decl. at ¶ 3 and Exh. A.

4. The words “Shaw Family Archives” are printed on the inside neck label of the T-shirt and on the tag that was affixed to the T-shirt. *See* Betz Decl. at ¶4 and Exh. B.

5. Tracy Betz paid \$9.99 for the T-shirt. *See* Betz Decl. at ¶4 and Exh. B.

6. At the time Tracy Betz purchased the T-Shirt, there were many more identical T-shirts at the Target store available for sale to other Indiana customers that displayed Marilyn Monroe’s name, picture, image and likeness on the front, on the inside neck label, and on the tag. These T-shirts also had the words “Shaw Family Archives” printed on the inside neck label and on the tag that was affixed to the T-shirt. *See* Betz Decl. at ¶ 6.

7. The T-shirt was sold in Indiana on September 6, 2006. *See* Betz Decl. at ¶ 2 and Exh. D.

8. Marilyn Monroe died on August 5, 1962. *See* Declaration of Anna Strasberg (“Strasberg Decl.”) at ¶ 5.

9. Neither Marilyn Monroe, LLC, nor CMG Worldwide, Inc. ever gave written consent for the Shaw Family Archives, Ltd. (“SFA”), or anyone else, to use Marilyn Monroe’s name, picture, image or likeness on the T-shirts sold in Indiana or on the tags affixed to the T-shirts sold in Indiana. *See* Declaration of Mark Roesler (“Roesler Decl.”) at ¶ 2; *see also* Strasberg Decl. at ¶ 8.

10. In her last will and testament, Marilyn Monroe devised 75% of the “rest, residue and remainder of [her] estate, both real and personal, of whatsoever nature and wheresoever situate. . . to which [she] shall be in any way entitled” to Lee Strasberg, her close friend and acting coach. *See* Strasberg Decl. at ¶ 6 and Exh. C.

11. When Lee Strasberg died, his 75% rights in Marilyn Monroe's intangible personal property, including, but not limited to, all rights of publicity, trademarks, and copyrights, were devised and passed by will to Lee's wife, Anna Strasberg. *See* Strasberg Decl. at ¶ 7 and Exh. D.

12. In July 2001, Anna Strasberg formed Marilyn Monroe, LLC, and transferred to Marilyn Monroe, LLC, all of her 75% rights and interests in the intangible personal property she held in the estate of Marilyn Monroe, including, but not limited to, any and all rights of publicity, trademarks, and copyrights. *See* Strasberg Decl. at ¶ 2 and Exhs. A and B.

13. Also in July 2001, the Anna Freud Centre, the holder of the remaining 25% rights and interests in the intangible personal property of the estate of Marilyn Monroe, (including, but not limited to, any and all rights of publicity, trademarks, and copyrights), likewise transferred its interest to Marilyn Monroe, LLC. *See* Strasberg Decl. at ¶ 3 and Exh. B.

14. CMG Worldwide, Inc. is the exclusive agent of Marilyn Monroe, LLC, with respect to the licensing of products bearing Marilyn Monroe's name, image, picture or likeness. Roesler Decl. at ¶ 3; Strasberg Decl. at ¶ 4.

15. SFA and Bradford Licensing maintain a website advertising their products and services. The main page of the website is: www.bradfordlicensing.com. This website can be accessed by people within the State of Indiana. *See* Roesler Decl. at ¶ 4.

16. This website includes numerous pictures of Marilyn Monroe and numerous references to the name "Marilyn Monroe" or "Marilyn." The website describes SFA and Bradford Licensing as having a partnership relationship for the marketing of Marilyn Monroe pictures and images. It is viewable by computer users within the State of Indiana. *See* Roesler Decl. at ¶ 5 and Exh. A.

17. Before this lawsuit was filed, the website advertised and offered to all customers, including Indiana customers the ability to purchase licenses for the use of Ms. Monroe's picture,

image and likeness on various commercial products. Only after this case was filed, SFA and Bradford Licensing added the phrase “[n]o images shall be licensed for sale or distribution in Indiana or in any jurisdiction that also requires the consent of the right of publicity holder.” Despite this change, people in Indiana can still view SFA’s and Bradford Licensing’s Internet website advertising with Marilyn Monroe’s name, picture and likeness on it. *See* Roesler Decl. at ¶ 4 and Exh. A.

18. Neither Marilyn Monroe, LLC, nor CMG gave written consent for SFA’s or Bradford Licensing’s commercial uses of Ms. Monroe’s name, picture, image or likeness in connection with its website advertising and solicitations. SFA and Bradford Licensing’s use of Ms. Monroe’s name, image, picture and likeness on the Internet continues to this day and has been on-going since at least May 2005. *See* Roesler Decl. at ¶ 6; Strasberg Decl. at ¶ 8.

Dated: New York, New York
October 25, 2006

Respectfully submitted,

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